

Approved as amended.
OPEN SPACE BOARD OF TRUSTEES
Minutes
June 11, 2003

BOARD MEMBERS PRESENT

| | | |
|-------------|------------------|------------------|
| Ken Dunn | Sean Kendall | Linda Jourgensen |
| Bruce Bland | Larry MacDonnell | |

STAFF PRESENT

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|------------------|-----------------|--------------|----------------|
| Mike Patton | Dean Paschall | Jim Tydings | Jim Reeder |
| Delani Wheeler | Dave Kuntz | Ann Goodhart | Cecil Fenio |
| Michael Sullivan | Ann Fitzsimmons | Marti Hill | Joe de Raismes |

CALL TO ORDER

The meeting was called to order at 6:00 p.m.

AGENDA ITEM 1 – Approval of Minutes

Sean Kendall moved that the minutes of May 7, 2003 be approved as amended. Bruce Bland seconded the motion. The motion passed unanimously.

AGENDA ITEM 2 – Director's Update

Delani Wheeler distributed a copy of the survey that was sent to 2000 random city voters asking questions regarding the sales tax extension for the General Fund and Open Space. The responses are due back later in June and the information will be available to council members as they work on the budget in July. Additional information will be passed on to the Board as staff receives it.

Dave Kuntz reported that the final meeting of the Visitor Plan Advisory Committee (VPAC) would be held on June 12 with the goal of completing their recommendations so they could be submitted to the Board at the June 25th meeting. He added that the dog issue is ongoing and there has been some initiative to resurrect the dog roundtable. At this time, staff feels there has been sufficient public process and that such efforts may not be necessary for this stage of the Visitor Plan. In response to a question about the process, Dave explained that after Board approval, which would include another opportunity for public comment, staff would integrate recommendations from the VPAC into the draft plan. The draft plan should be completed by the end of July.

Linda Jourgensen asked for an update on the Community Ditch Trail. Mike Patton told her that staff has been working with the Farmers Reservoir and Irrigation Company (FRICO) and the Colorado Department of Transportation (CDOT) and anticipates approval to use the culvert by the end of the year. Staff considers this project high priority due to safety issues.

Dean Paschall updated the Board on the request from Christian Griffith to hold a competitive event on Open Space and Mountain Parks (OSMP) property. Competitors will volunteer to do trail work in exchange for the opportunity to utilize open space. Staff has been working on a plan to establish a procedure for such requests and hopes to have that draft ready by the next Board meeting.

AGENDA ITEM 3 – Matters from the Board

Ken Dunn asked for current information about prairie dogs. Mike Patton told him that staff is tentatively scheduled to return to council at their second meeting in July. He reiterated that staff continues to work on the recommendations to council and agrees that the system cannot accept any additional prairie dogs. It will be a difficult issue and staff will be working with Planning, the City

Attorney's office and others to come up with ideas. The department has been asked to convene a public group regarding prairie dogs to assist in developing some viable options. Joe de Raismes, City Attorney, reported that the city has been in contact with the Colorado Department of Agriculture and according to their view, under Colorado law, the city is pre-empted, meaning that enforcement of the ordinance would be difficult, if not impossible. The state pesticide law exempts professional applicators, as well as businesses, from any restrictions on the use of approved poisons including poisoning prairie dogs. Mike added that the department has not accepted any new prairie dogs for relocation. Parks and Recreation will try to move prairie dogs from the south side of the Boulder Reservoir dam to locations on their own property. For the time being, this department has not been asked to take any more. Mike stressed that the primary issue is the fact that the relocation never ends.

Dean Paschall reported on the successful weed pulls that occurred at Chautauqua and Sanitas recently.

AGENDA ITEM 4 – Public Participation/Items Not on the Agenda

Karen Hollweg, 4440 Greenbriar, shared her observations of how the open space system and open space issues have changed over the past 10 – 15 years. Instead of people addressing acquisitions they are focused on dogs, horses and bikes. She was troubled by the number of dogs running down trails, the bags of poop that are left along the trails and the amount of saliva she has on her clothes when she gets home. She was also surprised with the use of open space for laying cables. She noted the studies that show how wildlife is impacted by development and how open space has affected property values in the area. She was concerned about the kinds of multiple uses that don't seem compatible on open space lands. Finally, she thanked staff and the Board for their stewardship of these lands.

AGENDA ITEM 5 – Acceptance of a donation of land from Peggy Kraft being approximately 8100 square feet known as Lots 11-13 Block 3 of Canon Park Subdivision of the Graham Placer to the Open Space and Mountain Parks Program.

Ann Goodhart told the Board that Mrs. Kraft approached the department with the offer to donate this property. Although staff would probably not pursue the purchase of this particular piece of property; because of its location adjacent to OSMP property and the fact that it was a donation, it seemed an appropriate addition. Ann confirmed that there didn't appear to be any additional management needs for this land. Sean Kendall expressed his concern about the steepness of the property and questioned if this could be a problem for the city regarding liability. Mike Patton assured the Board that there were no particular risks associated with this piece of property.

Public Participation

None.

Return to Board & Staff

MOTION

Ken Dunn moved that the Open Space Board of Trustees recommend that City Council accept the Kraft donation for Open Space and Mountain Parks purposes. Larry MacDonnell seconded.

Sean Kendall suggested publicizing the fact *that donors* could get a tax credit for *their* donation. This could possibly stimulate donations from other land owners. Bruce Bland extended a sincere thank-you to Peggy Kraft from the entire Board.

VOTE

The motion passed unanimously.

AGENDA ITEM 6 – Consideration of an easement request by Columbine Unity Center to use the existing access at 8778 Arapahoe Road, south of Park Lake subdivision.

Ann Goodhart gave some background on the city's 1990 purchase of the Paclamar Farms property and the original intent of the owner to keep a parcel for a single family lot. In 1997 the Columbine Unity Center purchased the lot and later applied to the County for a special use permit to build a church. After concessions were made to the original plans of the church, the county approved the development contingent upon the church securing an easement to share OSMP's access road. If the access easement is not approved by the OSBT, the church will still be built but a different access will have to be approved. Although city staff opposed the county's approval for the building of the church, they agree that the safest access into and out of the church parking area would be the OSMP access road. Staff determined the benefit of exchanging the access easement for a conservation easement would be that any future expansion of the church would be limited and their parking lot could be used for trailhead parking if needed in the future. There was some suggestion that the church parking lot could also be used for RTD parking but that was not part of staff's proposal. Ann clarified that the county would have to approve any use of the parking area aside from church use. Mike Patton stressed the importance of the conservation easement in limiting the possible expansion of the church in the future.

Ken Dunn noted that this particular subdivision exemption process, approved by the county, created unwelcome results. He asked if staff has reviewed other situations where similar problems could occur. Ann told him that staff has nearly completed the research and has found that there are possibly 2 or 3 that need to be reviewed. Staff will try to remedy these to prevent situations like the current one from happening again. Bruce Bland questioned the need to provide for a trailhead at this location. Ann told him although nothing is planned for the area, this keeps the option possible. Responding to a question by Sean Kendall, Ann told the Board that she is considering putting the trailhead language in the conservation easement but would probably not include the RTD parking proposal.

Public Participation

Marcia Hoffmeister, 2400 Park Lake Drive, told the Board that the residents' main concern is traffic safety at the subdivision entrance. She thought that the expanded use of the parking lot (for trailhead and RTD parking) would exacerbate this problem and requested that the city not pursue these additional uses.

Ed Byrne, Attorney representing Unity, apologized for suggesting the RTD use for the church parking lot. His intentions were to consider community benefits that may exist in the future.

Gary Steel, architect and planner working with the church, clarified that even without the conservation easement he was doubtful that the church would apply for expansion because the county would probably not approve it. He added that with the physical improvements at the intersection and the bulk of the church traffic occurring at off hours, safety at the intersection could actually be enhanced.

George Witters, 2210 Park Lake Drive, agreed that the best access for the church would be at the intersection. He proposed that if the city council approves the easement, it should be structured in such a way that the rights granted to the church will be rescinded if the easement conditions are broken.

Barbie James, church member, suggested that the only people who would use the RTD would be the people from Park Lake.

Return to Board & Staff

MOTION

Larry MacDonnell moved that the Open Space Board of Trustees recommend to the City Council that an easement be granted to Columbine Unity Center for the purpose of ingress and egress in exchange for an easement that limits any future expansion of the church facility beyond the current plan approved by Boulder County, and permits use of a portion of the parking area for trailhead purposes if needed in the future. Sean Kendall seconded the motion.

Sean suggested that although the RTD parking issue is not included in the conservation easement, this might be the best time to create the option for its possibility in the future. He suggested discussion with Transportation about projected future needs in that part of the county adding that at some point RTD parking in that area might be beneficial. Larry MacDonnell believed that with the county approval process required for any change in the use of the church parking lot, the conservation easement would not necessarily preclude that possibility in the future. There was some discussion and the Board agreed that accommodating the possibility for RTD parking was not a true benefit to OSMP, which is a condition of the department's conservation easement policy.

VOTE

The motion passed unanimously.

AGENDA ITEM 7 – Consideration of the disposition of approximately one (1) acre of city of Boulder Open Space and Mountain Parks property for the purpose of a utility easement granted to Level 3 Communications for \$48,922.66 as a settlement of an encroachment of a fiber optic line located on Swartz OSMP property.

Ann Goodhart began the presentation by describing how the contractor, working for Level 3, changed the original plans of drilling along the railroad right of way and instead trenched on the Swartz open space property to lay the fiber optic cable. Level 3 notified the city when it discovered the error made by the contractor. At that time staff and Level 3 discussed options and determined that it would be more destructive to the land to re-lay the cable than to make the easement legal. Jim Tydings described how staff determined the settlement calculation based on staff time involved, the value of the area of land in the easement and a penalty cost (which was based on the cost of removal and replacement of the fiber optic line plus reclamation). He said that Level 3 agreed to this amount.

Ken Dunn asked the representatives from Level 3 how much of a settlement they were going to receive from the contractor since he/she appeared to have made the change in the contract intentionally. Richard Spilde, legal representative from Level 3, introduced himself and Dan Dolan, a business representative. He told the Board that Level 3 did pursue a claim against the contractor that, he believed, was ongoing. Ken asked, since Level 3 did not sustain damage as a result of this breach, but OSMP did, if the department should be entitled to any overage resulting from that litigation. Richard said the contractor probably did this to try to meet a schedule but since Level 3 signed the permits they wanted to make a settlement with the city directly. He added that Level 3 would probably get back the overpayment to the contractor. Ken commended the good faith of Level 3 but questioned why OSMP would not be entitled to all of the settlement from the contractor minus any expenses Level 3 incurred during the process. Richard told him that Level 3 was responsible for acquiring the authorization to put the facilities in place and the recovery of the settlement reached with OSMP would probably be included in those discussions. He said that if the cable had been planned to be laid on OSMP property originally, Level 3 would have had to pay OSMP for an easement and that is part of the recovery they would not receive.

Whether or not the contractor acted willfully would influence the amount of damages retrievable. Level 3 hoped this agreement with the city would allow both organizations to put an end to this situation. Richard added that Level 3 expected to get back only some of the money paid to the contractor.

Ken thought it would be appropriate that the agreement with Level 3 include the entitlement of OSMF to any settlement awarded beyond Level 3's expenses and cautioned that the corporation should not become enriched if the settlement is large. Richard told him that Level 3 would probably not become enriched but merely able to retrieve some of the overpayments from the contractor. He stressed that they have paid/will pay two parties, a settlement to the city and award fees to the contractor. Ken stressed that his proposal does not suggest slighting Level 3 but that if any money, over their costs, is retrieved it seems the damaged party, OSMF, should receive that overage. Richard said the negotiated amount seemed an appropriate settlement and that the scenario Ken suggested (that there could possibly be a somewhat large settlement) was not probable. Ken thought it would be important to get the name of the contractor so that he/she is not permitted to do any work involving easements on open space.

Bruce Bland agreed with Ken's line of thought and added that a precedent should not be established that would allow a utility company to benefit from damage made by contractors to open space. This incentive should be removed and if there is an overage it should come back to open space. Richard stated that the settlement was calculated with the intention to make open space whole and that their claim against the contractor would be consequential. He was not aware of what that claim was, or if it has even been settled. Responding to a question from Sean Kendall, Jim Tydings told the Board that the calculations made by staff did not include any compensation from the contractor. Sean suggested that any substantial savings made by the contractor or Level 3 by not having to drill the underground tunnel should also have been included in the calculation. He questioned if that could be considered part of the damage. Jim said that question could be pursued.

Larry MacDonnell clarified that there must have been some savings involved in the way the cable was laid over how it was originally planned to be laid and he questioned who benefited from those savings. If Level 3 goes after the contractor for the difference, OSMF should be entitled to that money. Richard said that he was not handling that case and was not aware of the status of the claim. Larry asked Richard if he could find out what that amount was, based on the difference between the estimated cost of laying the cable as originally planned and the expense of how it was actually installed. Larry and Ken agreed that the Board needed more information before they could determine if the negotiated amount was appropriate. Ken suggested that the city attorney enter into a nondisclosure agreement in order to get the facts necessary to determine the fairness of the original calculation. Richard asked for a summary of the Board's requests. Linda said the issue was that the contractor did not do a directional bore and asked how much that savings was and how much of that was or will be recovered by Level 3. Richard said that they probably did not pay for the boring since it was not done, but they probably will retrieve some of the reward payments. However, he did not anticipate the kind of savings suggested by the Board.

Larry asked about the possibility of a joint suit if they have not already reached a settlement with the contractor. Richard restated that since Level 3 is the party on the permit they hoped to resolve it on their own. Linda asked Jim advice on how the Board should proceed. Jim told the Board that after gathering the facts requested from Level 3 and providing that information to the Board they would then be able to reconsider the fairness of the original settlement and amend that amount if they saw fit. Ken asked Jim to create a list of questions that would be reviewed by the Board before sending them on to Level 3. Linda stressed that their questions did not reflect any sort of bad faith but rather the need to act as trustees to the OSMF program. Jim Tydings will review the minutes, determine what the questions are, return those to Board members for additional modifications and then send them to, or meet with, Level 3 to receive responses to those questions.

Public Participation

Return to Board & Staff

MOTION

No motion was made.

AGENDA ITEM 8 – Recommendation to Planning Board and City Council regarding year 2004 budget and CIP.

Delani Wheeler and Michael Sullivan presented this recommendation. Delani reminded the Board that most of this information was discussed at the Board retreat in May. She noted that the current list of reductions was in a different format and that the CIP included more detail. One important strategy change was that at the time of the retreat the department continued to allocate funds for the 6.5 vacancies and capture that as a salary savings. Now, by recommendation of the budget office, the department has removed those positions from the approved roster. Mike Patton clarified that this does not affect the hiring of seasonals if the budget allows it next year. Delani explained that future spreadsheets will build in the reductions. She reviewed the budget process and stressed that it is dynamic. The purpose of this request was to gain approval to spend the money in the way the department determines is best. The target is for the department to be in balance.

Michael Sullivan added that the removal of the 6.5 FTEs from the base budget means that the department will start with a lower base in future years. The city manager requested that all city departments funded by the General Fund submit a budget showing a 25% reduction. Michael reviewed the selections made by the city manager of reductions he would accept.

Mike Patton told the Board that any cuts made beyond what have already been made will be very painful. Bruce Bland encouraged staff to make all of this known to the city manager *and city council* as council decides whether or not to put the open space sales tax on the ballot.

Public Participation

None.

Return to Board & Staff

MOTION

Sean Kendall moved that the Open Space Board of Trustees approve and recommend that the City Council approve the 2004 Open Space and Mountain Parks Management and Capital Improvements Project Budget requests as set forth in this memorandum and accompanying materials. Ken Dunn seconded the motion.

VOTE

The motion passed unanimously.

Mike Patton announced the recent resignations of Michael Sullivan and Cary Richardson and related that both have made important contributions to the department during their tenures. They will be missed.

AGENDA ITEM 9 – Consideration of a motion to authorize the execution of a memorandum of understanding with the Colorado Historical Society regarding cultural resource reports.

Joe de Raismes presented the memorandum of understanding (MOU) negotiated with the Colorado Historical Society regarding the handling of archeological reports, in particular, those examining the cultural resources found on Open Space. The city was concerned about its ability to protect those resources. The discussions started about a year and a half ago and included soliciting suggestions and advice from the tribal groups. The MOU provides that there be a preparation of two reports: one for the public that would not specify locations of artifacts and a confidential report which would contain that information. Larry MacDonnell noted that cultural resource protection is not on the charter and questioned if that should be considered. Joe told him that, historically, the Board has recognized the importance of such protection and so although it could be added to the charter, he did not think it was necessary.

Public Participation

None.

Return to Board & Staff

MOTION

Larry MacDonnell moved that the Open Space Board of Trustees recommend that the City Council authorize the execution of the memorandum of understanding with the Colorado Historical Society (Attachment A). Bruce Bland seconded the motion and stressed the importance of depending on professionals to help the department adequately protect both the cultural resources and wildlife found on OSMP lands.

VOTE

The motion passed unanimously.

AGENDA ITEM 10 – 0 Linden Drive – Concept Review.

Delani Wheeler began her presentation by showing the Board an aerial view of the property in discussion. She reviewed the past recommendations made by the Board regarding this property. It is being brought before them again because a development review application has been submitted by a potential new landowner. Delani explained that staff was requesting Board approval of the concept that a particular portion of the “Open Space-Other” parcel be dedicated in fee to the OSMP program. Bruce Bland expressed his concern about the city allowing development on the floodplain and didn’t think the department should encourage that in any way. Delani explained that the parcel in consideration could be dedicated as an easement but the department recommended a full fee interest in the property which would be transferred at the time of annexation. Sean Kendall cautioned that by allowing the property to be subdivided it would invite developers to put in three houses where only one would be built if it remained in the county.

Public Participation

Kurt Gerstle, 3650 4th Street, stated that he was glad the upper portion of the parcel was going to be open space but warned that Linden Avenue is steep and curved in that area and dangerous for pedestrians trying to access the open space to the south. He urged the Board to ask the Planning Board to provide pedestrian access through the development.

John Stone, 3795 Wild Plum Court, opposed any change of open space category of this property. Since the property is in unincorporated Boulder County only one house can built. He told the Board that prior to Mr. White building his house there was some discussion about a proposed subdivision in that area. One of the problems noted at that time was access to the property. He said that the area is extremely dangerous because it is heavily used by bikers and pedestrians and the visibility is impaired by the *morning* sun. At that time Transportation determined that there could not be an access there because of the safety issue. Now the new developer is putting an

access in the same area. He also reported that he has seen the area where the houses are planned completely flooded. He said that currently people access open space through private property. He thought that approval of this recommendation would accommodate the owner of the property and enable him to sell an overpriced property. He thought that no more than one house should be built on the parcel.

Return to Board & Staff

Delani reminded the Board that in January they approved the land use designation change to a split designation including open space designation only on the westerly half. Staff is not currently asking that they become involved in decisions about land below this boundary but rather that the designated land becomes dedicated to the city as open space.

Ken Dunn asked about the possibility of addressing the access issue. Bruce suggested that the Visitor Plan might provide guidance to such quandaries. Dave Kuntz pointed out that the Visitor Plan may not be specific enough for this case. He acknowledged that this area has been used by neighbors for a long time and although its use is not inappropriate the department would not want to encourage it by putting in a parking area. Larry MacDonnell cautioned that the Visitor Plan directs management issues on OSMP and not on private property. He suggested keeping the access option open through the site review process and favored adding a pedestrian right of way access to the recommendation. There was some discussion about potential weed problems and the possibility of restricting cats in the area. Delani said that vegetation requirements could be placed in the subdivision agreement by the Planning Board. Linda Jourgensen thought that the OSBT should be concerned about the access issue and let the Planning Board deal with those other aspects of the property. Mike said that staff could make such suggestions to the Planning Board.

MOTION

Ken Dunn moved that the Open Space Board of Trustees recommend to the Planning Board that the open space area in the Concept Plan for 0 Linden Drive be dedicated to the City in fee through the development process. A friendly amendment made by Larry MacDonnell changed the motion to: the Open Space Board of Trustees recommend to the Planning Board that the open space area in the Concept Plan for 0 Linden Drive, as shown in Attachment B, be dedicated to the City in fee through the development review process and recommend providing pedestrian access through the development to open space.

Sean Kendall opposed the friendly amendment and questioned the propriety in creating a formal access to an undesignated trail.

VOTE

The motion passed by a vote of 3 to 2; Sean Kendall and Bruce Bland *voted against* the motion.

Jim Tydings commended staff on their rapid and professional handling of the Boulder Falls issue. He also told the Board that the city stands ready to proceed to have the Level 3 line removed if need be.

ADJOURNMENT – The meeting adjourned at 9:20 p.m.

These minutes were prepared by Cecil Fenio.